

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1316 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI KHUBCHAND GAGWANI

Versus

MANILAL DHARAMDAS GAGWANI

Appearance:

MR DC DAVE for Petitioner

MR AJ PATEL for Respondent No. 1, 5, 6, 7, 8, 9,10,11,12

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 17/02/2000

ORAL JUDGEMENT

This is an appeal against the judgment and decree

dated 23rd January, 1987 passed by the Civil Judge, (S.D.), Nadiad dismissing the suit filed by the plaintiff-appellant. Shri Dhaval Dave, learned counsel for the appellants and Shri A.J.Patel, learned counsel for the respondents have been heard.

Brief facts giving rise to this appeal are as under:

The suit for partition of the joint family property was filed by the plaintiffs-appellants against the defendants-respondents claiming 1/12th share in the property in dispute. The suit was contested on various grounds. During the pendency of the suit, an application was moved by the defendants-respondents that earlier, an award was given by the arbitrators and as such, the suit is liable to be dismissed in view of section 32 of the Indian Arbitration Act, 1940. Subsequently, an application under section 14 read with section 17 of the Arbitration Act was moved praying that the award be filed in the Court and it may be made a rule of the Court. This application was reportedly moved by the so called arbitrator. It was held by the Court below that the said award is no award in the eyes of law and, as such, no action could be taken on the basis of such award. The suit was ultimately dismissed with an observation that the so called award failed to qualify the definition of 'award'. The merits of the controversy were not entered into by the Court below nor the shares were determined. Even if the award was considered by the Court below not to be an award in the eyes of law, the suit for partition should have been decided on merits one way or the other. Since the merits of the plaintiffs-appellants' suit were not at all discussed and the suit was dismissed on technical ground, which could not legally be done by the trial Court, we are of the opinion that the appeal should be allowed and the suit should be remanded to the trial Court for disposal in accordance with law. The appeal, therefore, succeeds.

The appeal is hereby allowed.

The judgment and decree under appeal are set aside. Special Civil Suit No. 319 of 1984 instituted in the Court of the Civil Judge, (S.D.), Nadiad is remanded to the Court of the Civil Judge, (S.D.), Anand which shall be heard and decided in accordance with law after affording full opportunity of hearing to the parties. The parties shall be permitted to lead oral and documentary evidence as they desire in support of their cases. In the facts and circumstances of the case, there

shall be no order as to costs.

Since the suit in question was instituted in the year 1984, it is expedient to issue direction to the trial Court to hear and decide the suit expeditiously, preferably within four months from the date of receipt of copy of this judgment.

17.2.2000. (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas